



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
 1200 Sixth Avenue
 Seattle, WA 98101

JUN 14 2000

Reply To
 Attn Of: OW-131

RECEIVED BY
 JUN 16 2000
 SNAKE RIVER BASIN OFFICE
 U.S. FWS

Mike Krause
 National Marine Fisheries Service
 525 NE Oregon St. , Suite 500
 Portland, Oregon 97232-2737

Cindy Berry
 U.S. Fish & Wildlife Service
 Eastside Federal Complex
 911 NE 11th Avenue
 Portland, Oregon 97232

Dear Mr. Krause and Ms. Berry:

As you know, our agencies are currently engaged in informal consultation under section 7 of the ESA regarding specific revisions to Oregon and Idaho water quality standards. This is to inform you that EPA Region 10 is preparing to approve these revisions subject to the results of consultation under section 7 of the Endangered Species Act (ESA). While our preference would be to await completion of consultation before proceeding with approval, we believe the approach being taken is necessitated by circumstances, and is consistent with our obligations under Section 7 of the ESA, including Section 7(d). These revisions were submitted to EPA some time ago, are currently in effect as a matter of State or Tribal law, and have been awaiting our review under the Clean Water Act (CWA). In the next few weeks, we will be approving for Oregon revisions to mixing zones, antidegradation and total dissolved gas, and for Idaho, changes to beneficial use designations. Later this summer we anticipate approving the Warm Springs Tribe complete water quality standards package.

We recognize that taking the approval actions in advance of completing ESA consultation is a departure from EPA Region 10's commitment to consult with the Services prior to taking CWA action on standards. As explained below, there are two primary reasons for this departure. First, we are acting to carry out our Agency's commitment to take action on the current backlog of water quality standards submittals. Second, a recent change in the regulatory structure for approving water quality standards has heightened the importance of expeditious action on water quality standards by EPA.

Nationally, EPA is working to eliminate a backlog of water quality standards revisions that States and Tribes have submitted to EPA. EPA has identified 70 submissions that have yet to be acted upon, 49 of which are pending action due to ESA consultation. Six of these 49 submissions are by states or "tribes" in EPA Region 10.

The significance of this backlog has been heightened by a revision to the federal water quality standards regulations which became effective May 30, 2000. This revised regulation, commonly known as the "Alaska Rule," clarifies that state and tribal water quality standards are not effective as a federal matter until EPA approves them. This is a significant change from the former situation, in which state/tribal water quality standards were considered effective as a federal matter immediately upon legal adoption by the state/tribe. The Alaska Rule means that far greater significance now attaches to timely and expeditious EPA action on water quality standard submissions. For instance, revisions to standards that represent an increase in stringency will generally not be implemented through federal NPDES permits until approved by EPA. The need for expeditious action will present an enormous challenge to EPA given the complexities of standards, and necessitates that we reassess our strategy for complying with ESA requirements under section 7. A critical first step in responding to the Alaska Rule involves addressing the backlog of standards revisions so that we may better focus our efforts on future submittals.

We believe this approach to acting on water quality standards revisions is consistent with Section 7(d) because it does not foreclose formulation or implementation of alternatives that might be determined appropriate as the result of ESA consultation. By approving the standards "subject to the results of consultation under section 7(a)(2)," EPA clearly announces that it has retained the discretion to revisit and revise as determined to be appropriate through the ESA consultation process. In such a situation, there will be no irreversible or irretrievable commitment of resources, and EPA will retain the full range of options available under section 303(c) for ensuring water quality standards are protective of beneficial uses.

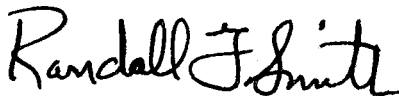
EPA remains committed to fulfilling our responsibilities under the ESA and to work with the Services to ensure that the water quality standards we will soon be approving are protective of the species and their habitat as intended by the ESA. We have prepared preliminary draft Biological Assessments for the standards referred to above that are awaiting action. We will be providing them to your respective field offices informally for review and to begin coordination on these standards.

As for consultations on future standards revisions, I believe the best course is for the Services to become involved in the standards development process as early as possible. ESA considerations should be articulated at a stage in the process when the standards may still be changed prior to submittal to EPA. This in turn will facilitate a more expeditious consultation process, and will increase the likelihood that consultations may be completed within EPA's statutory deadline for action on submittals.

In closing, I would like to reaffirm our commitment to working with you to ensure that requirements of the ESA are met as EPA reviews and acts upon State and Tribal water quality

standards. While the Alaska Rule necessarily changes the timing of our approach to integrating ESA consultation with water quality standards approvals, it does not in any way lessen our commitment to working with you to ensure the protection of threatened and endangered species. Please feel free to contact me at (206)553-1261 or Lisa Macchio of my staff at (206)553-1834 if you have questions concerning this letter.

Sincerely,



Randall F. Smith
Director
Office of Water

cc: Carol Schuler, USFWS Portland
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